

2nd Session**106th Congress*****WATER RESOURCES DEVELOPMENT ACT OF 2000***

To provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

REPORT ANALYSIS

- 1 Sec. 1. SHORT TITLE.
- 2 Sec. 2. DEFINITIONS.
- 3 Sec. 3. COMPREHENSIVE EVERGLADES RESTORATION PLAN.
- 4 Sec. 4. WATERSHED AND RIVER BASIN ASSESSMENTS.
- 5 Sec. 5. BROWNFIELDS REVITALIZATION PROGRAM.
- 6 Sec. 6. TRIBAL PARTNERSHIP PROGRAM.
- 7 Sec. 7. ABILITY TO PAY.
- 8 Sec. 8. PROPERTY PROTECTION PROGRAM.
- 9 Sec. 9. NATIONAL RECREATION RESERVATION SERVICE.
- 10 Sec. 10. OPERATION AND MAINTENANCE OF HYDROELECTRIC FACILITIES.
- 11 Sec. 11. INTERAGENCY AND INTERNATIONAL SUPPORT.
- 12 Sec. 12. REBURIAL AND TRANSFER AUTHORITY.
- 13 Sec. 13. AMENDMENT TO RIVERS AND HARBORS ACT.
- 14 Sec. 14. STRUCTURAL FLOOD CONTROL COST-SHARING
- 15 Sec. 15. CALFED BAY DELTA PROGRAM ASSISTANCE.
- 16 Sec. 16. PROJECT DEAUTHORIZATIONS.
- 17 Sec. 17. FLOODPLAIN MANAGEMENT REQUIREMENTS.
- 18 Sec. 18. TRANSFER OF PROJECT LANDS.
- 19 Sec. 19. PUGET SOUND AND ADJACENT WATERS RESTORATION.

SEC. 3. COMPREHENSIVE EVERGLADES RESTORATION PLAN.

An American treasure is in trouble. Once the Everglades was a vibrant, free-flowing river of grass that provided clean water from Lake Okeechobee to Florida bay. It was a haven for storks, alligators, panthers and other wildlife and was critical to the health of estuaries and coral reefs. Today this extraordinary ecosystem-unlike any other in the world-is dying. Over the past half-century, as population of south Florida has grown, the health and size of the Everglades have steadily declined. Fully half the Everglades have been lost to agriculture and development. And the surviving remnants suffer from a severe shortage of clean, reliable water. As a result of our efforts to guard communities against flooding and to ensure adequate water supplies for drinking and irrigation, we have diverted the natural water flows that are the essence and very lifeblood of the Everglades.

On July 1, 1999, the Secretary of the Army in partnership with the state of Florida, submitted to Congress a comprehensive plan to restore the South Florida ecosystem by modifying the existing Central and Southern Florida project. The South Florida ecosystem includes the Everglades, Lake Okeechobee, Florida Bay, and Biscayne Bay. The Comprehensive Everglades Restoration Plan (CERP), which will be implemented over the next 25 years, will:

- a. Improve the health of over 2.4 million acres of the south Florida ecosystem, including Everglades National Park;
- b. Improve the health of Lake Okeechobee;
- c. Eliminate virtually all damaging freshwater releases to the estuaries;
- d. Improve water deliveries to Florida and Biscayne Bays;
- e. Improve water quality; and
- f. Enhance water supply and maintain flood protection.

The CERP consists of over 60 components that work together to restore, preserve, and protect the South Florida ecosystem by delivering the right amount of water, of the right quality, to the right places and at the right time. This legislation approves the CERP as a scientifically sound roadmap for restoration and provides the authority to implement several of the improvements described in the CERP.

Subsections (a)(1)-(4) provide definitions for terms specific to the Comprehensive Everglades Restoration Plan, including "Central and Southern Florida Project," "South Florida Ecosystem," "Comprehensive Everglades Restoration Plan" and "Natural System."

Subsections (b)(1)-(7) present congressional findings of fact that the restoration of

1 the South Florida ecosystem, including America's Everglades, is in the Nation's interest and
2 that the Federal government and the State of Florida are full partners in the restoration effort.
3 The findings note that clean fresh water is the lifeblood of the South Florida ecosystem,
4 supporting a diverse and unique environment, which include nationally and internationally
5 recognized areas, agriculture and other vital economic activity, as well as the population of
6 South Florida. Modifications to the existing Central and Southern Florida Project are needed
7 to ensure that appropriate quantities of clean fresh water are available at the right time and
8 with the proper distribution for the South Florida ecosystem, including the human
9 environment. Based on sound science, the Comprehensive Everglades Restoration Plan is
10 designed to restore and preserve South Florida's natural system environment, while
11 enhancing water supplies and maintaining flood protection. Although the Comprehensive
12 Everglades Restoration Plan contains a number of key components designed to benefit
13 federally designated areas by improving the quantity, quality, timing and distribution of water,
14 the plan is interconnected, with each of its component parts related to another. Further, the
15 plan will be implemented using the principles of adaptive assessment, recognizing that
16 modifications will be made in the future based upon new information.

17 Subsections (c)(1)-(2) approves the Comprehensive Everglades Restoration Plan as
18 necessary modifications to the existing Central and Southern Florida Project in order to
19 restore, preserve and protect the South Florida ecosystem and provide for other water related
20 needs of the region, including flood protection, the enhancement of water supplies, and other
21 objectives served by the Central and Southern Florida Project. This subsection authorizes the
22 Secretary to carry out an initial suite of projects including four pilot projects and ten initial
23 construction component features in accordance with the plans, and subject to the conditions,
24 described in the Central and Southern Florida Project Comprehensive Review Study Report
25 of the Chief of Engineers dated June 22, 1999.

26 The four pilot projects are needed to address uncertainties associated with some of
27 the physical features that are in the recommended plan. These projects include aquifer
28 storage and recovery in the Caloosahatchee River Basin; in-ground reservoir technology in
29 the Lake Belt region of Miami-Dade County; levee seepage management technology adjacent
30 to Everglades National Park; and advanced wastewater treatment technology to determine
31 the feasibility of reusing waste water for ecological restoration. The authorized funding level
32 for the pilot projects is \$69,000,000, to be equally cost shared between the Federal
33 Government and the State of Florida.

1 Ten initial construction component features and a ten-year adaptive assessment and
2 monitoring program are authorized at a total cost of 1,100,918,000, to be equally cost shared
3 between the Federal Government and the State of Florida. These projects are necessary to
4 expedite restoration and water quality improvements. Specifically, these features will, in the
5 short-term, provide system-wide increases and improvements in water quantity, quality and
6 flow distribution benefits. Further, authorization of these features in this Act will ensure
7 maximum integration with ongoing Federal, tribal, state, and local restoration and water
8 quality improvement programs. These 10 project features were selected for initial
9 authorization based on the following four factors: 1) the ability to provide immediate water
10 quality and flow distribution benefits to the ecosystem; 2) the ability to utilize lands already
11 purchased; 3) the linkage with on-going restoration projects; and 4) maximizing the benefits
12 of Federal investments already undertaken.

13 Prior to implementing any these initial features, the Secretary of the Army will review
14 and approve a Project Implementation Report, containing the results of site specific field
15 investigations, engineering and design, and supplemental National Environmental Policy Act
16 compliance . A description of each of the initial features authorized in this Act follows.

17 (1) C-44 Basin Storage Reservoir (\$112,562,000) - This feature is a 40,000 acre-feet
18 water storage reservoir and will provide significant regional water quality benefits through
19 the reduction of nutrients entering by the St. Lucie River and the Indian River Lagoon by
20 reducing damaging water releases from Lake Okeechobee.

21 (2) Everglades Agricultural Area Storage Reservoirs - Phase 1 (\$233,408,000) - This
22 feature will result in approximately 300,000 acre-feet of water storage that will improve the
23 timing of environmental water releases to the Water Conservation Areas, reduce damaging
24 freshwater releases to the estuaries, and meet supplemental water supply for agricultural
25 demands in the Everglades Agricultural Area (EAA). The project will further enhance the
26 performance of STA 3 and 4, thereby improving overall water quality of EAA water releases
27 into the Everglades. Lands for the construction of this component have been acquired by the
28 South Florida Water Management District through the purchase and exchange of the
29 Talisman Sugar Corporation properties through funds provided by the Department of the
30 Interior.

31 (3) Site 1 Impoundment (\$38,535,000) - This 15,000 acre-feet water storage
32 reservoir, located adjacent to Loxahatchee National Wildlife Refuge, will capture water that
33 is presently sent to tide to supplement water deliveries to the Hillsboro Canal during dry

1 periods, thereby reducing water demands on Lake Okeechobee and Loxahatchee National
2 Wildlife Refuge. Much of the land that is required for this feature has already been acquired
3 by the South Florida Water Management District.

4 (4) Water Conservation Areas 3A/3B Levee Seepage Management (\$100,335,000) -
5 This feature will control seepage from Water Conservation Areas 3A and 3B by improving
6 groundwater elevations and will provide flood protection for the western C-11 Basin.

7 (5) C-11 Impoundment and Stormwater Treatment Area (\$124,837,000) - This
8 proposed 6,400 acre-feet impoundment and stormwater treatment area, located in western
9 Broward County, will divert and treat runoff from the western C-11 Basin that is presently
10 discharged into Water Conservation Areas 3A and 3B. After treatment, the water will then
11 supply either Water Conservation Area 3A, the C-9 Stormwater Treatment Area, or the
12 North Lake Belt Storage Area.

13 (6) C-9 Impoundment and Stormwater Treatment Area (\$89,146,000) - This 10,000
14 acre-foot impoundment and stormwater treatment area will enhance groundwater recharge in
15 the western C-9 Basin in Broward County, provide seepage control for Water Conservation
16 Area 3 and buffer areas to the west, provide flood protection, and provide treatment of runoff
17 in the North Lake Belt Storage Area.

18 (7) Taylor Creek/Nubbin Slough Storage and Treatment Area (\$104,027,000) - This
19 proposed 50,000 acre-feet water storage reservoir and 20,000 acre-feet stormwater treatment
20 area will allow flows to Lake Okeechobee to be attenuated when lake levels are high or
21 rising, and improve water quality treatment for flows from Taylor Creek and Nubbin Slough
22 basin, which currently contribute to the highest phosphorus inflow concentrations to Lake
23 Okeechobee. Some of the lands that are required for this project have already been acquired
24 by the South Florida Water Management District.

25 (8) Raise and Bridge East Portion of Tamiami Trail and Fill Miami Canal within
26 Water Conservation Area 3 (\$26,946,000) - Modification or removal of water control
27 structures in Water Conservation Areas 3A and B will enhance sheetflow within the
28 remaining natural system areas within the Everglades, thereby reestablishing the ecological
29 and hydrological connections between Water Conservation Areas 3A and 3B, Everglades
30 National Park and Big Cypress National Preserve. The first phase of enhancing sheetflow
31 necessitates elevating eastern portions of Tamiami Trail and backfilling portions of the Miami
32 Canal within Water Conservation Area 3.

33 (9) North New River Improvements (\$77,087,000) - This feature will improve the

1 North New River Canal and southern conveyance system in order to handle increased water
2 flows resulting from the backfilling of the Miami Canal within Water Conservation Area 3 to
3 allow for continued water supply deliveries to Miami-Dade County.

4 (10) C-111 Spreader Canal (\$94,035,000) - This feature will improve water deliveries
5 and enhance the connectivity and sheetflow in the Model Lands and Southern Glades areas,
6 reduce wet season flows in C-111 and decrease potential flood risk in the lower south
7 Miami-Dade County area. Existing C-111 Project design features are enhanced through the
8 construction of a stormwater treatment area, enlarging the S-332E pump station, and
9 extending the canal under U.S. Highway 1 and Card Sound Road into the Model Lands. This
10 feature also results in the filling in the southern portion of the C-111 Canal and removal of S-
11 18C and S-197 structures.

12 (11) Adaptive Assessment and Monitoring Program (10 years) (\$100,000,000) - This
13 10 year system-wide monitoring program is proposed for funding at an annual cost of
14 \$10,000,000 and will assure that ecosystem benefits are achieved and maintained in the
15 remaining natural system areas, including Everglades National Park, Biscayne Bay, Big
16 Cypress National Preserve, Loxahatchee National Wildlife Refuge and other natural system
17 areas. Adaptive assessment and monitoring will improve the overall performance of
18 Comprehensive Everglades Restoration Plan, by ensuring that on-going planning, design, and
19 project implementation incorporates new information. The monitoring program measures
20 how well each of the component parts of the plan accomplishes its objectives, and allows for
21 refinements in succeeding components. At the request of the South Florida Ecosystem
22 Restoration Task Force, independent scientific peer review from the National Academy of
23 Sciences is expected to contribute to this effort.

24 Subsection (d) provides a “program authority” similar to the “critical projects”
25 authority in section 528(b)(3) of the Water Resources Development Act of 1996.
26 Specifically, subsection (d) authorizes the Secretary to implement modifications to the
27 Central and Southern Florida Project that are consistent with the Comprehensive Everglades
28 Restoration Plan and that will produce independent and substantial restoration benefits,
29 provided that the total Federal cost for each project not exceed \$35,000,000 and the total
30 Federal costs of all projects authorized under this authority not exceed \$250,000,000. Prior
31 to implementation, the Secretary must review and approve a Project Implementation Report
32 for each project. This authority would expedite implementation of the Comprehensive
33 Everglades Restoration Plan and allow 27 specific components of the Comprehensive Plan,

1 with a total cost of \$500,000,000, to be implemented expeditiously.

2 Subsection (e) requires the Secretary to transmit a Project Implementation Report to
3 the Congress prior to the authorization for any project not authorized in subsections (c) and
4 (d). This allows the Secretary to complete the additional studies necessary to propose future
5 authorizations to the Congress for the elements of the Comprehensive Everglades
6 Restoration Plan not authorized in subsections (c) and (d), as well as studies related to the
7 improvement of the performance of the features of the Comprehensive Everglades
8 Restoration Plan. Such future authorizations shall be subject to subsections (f) through (j) of
9 this Act.

10 Subsection (f) directs that the non-Federal share of the cost of implementing the
11 projects authorized in subsections (c), (d), and (e) to be 50 percent. It directs the non-
12 Federal local sponsor to be responsible for the acquisition of all lands, easements and rights-
13 of-way, and relocations, and provides credit for such acquisitions toward the non-Federal
14 share regardless of the date of acquisition. This section provides that the non-Federal local
15 sponsor may accept Federal funding for the purchase of the necessary lands, provided that
16 such Federal funding is credited toward the Federal share of the project cost. Operations and
17 maintenance costs will be shared 60 percent non-Federal and 40 percent Federal. This is
18 considered an appropriate allocation of costs in light of the benefits to Federal lands that will
19 be achieved by implementation of the CERP.

20 Subsection (g) requires that prior to implementing any project feature authorized in
21 subsections (c) and (d), the Secretary complete a Project Implementation Report for each
22 project to address its cost-effectiveness, engineering feasibility, and potential environmental
23 impacts. The Project Implementation Report will bridge the gap between the programmatic-
24 level design contained in the Comprehensive Everglades Restoration Plan and the detailed
25 design necessary to proceed to construction. The purpose of the Project Implementation
26 Report is to affirm, reformulate or modify a component or group of components in the
27 recommended Comprehensive Plan. This section requires that the Project Implementation
28 Report for each project identify any additional water to be made available by that project for
29 the natural system, existing legal users and other water related needs, consistent with
30 programmatic regulations governing the dedication and management of water to be issued
31 pursuant to subsection (i).

32 Recognizing that a large percentage of the population of the South Florida ecosystem
33 is made up of minority groups (e.g., 20.5 percent Hispanic), subsection (h) requires the

1 Secretary to establish a program to ensure that socially and economically disadvantaged
2 individuals within the South Florida ecosystem are informed of the CERP and have a
3 meaningful opportunity to review and comment on its implementation. In addition, this
4 subsection requires that the Secretary establish a program goal that not less than 10 percent
5 of the amounts made available to construct pilot projects, initial projects and programmatic
6 authority projects be expended with small business concerns owned and controlled by socially
7 and economically disadvantaged individuals within the South Florida ecosystem.

8 Subsection (i) provides that the primary and overarching purpose of the
9 Comprehensive Everglades Restoration Plan is to restore, preserve and protect the natural
10 system within the South Florida ecosystem and directs that the Plan be implemented in such a
11 way to ensure that the benefits to the natural system and human environment - in the form of
12 the proper deliveries of clean fresh water at the proper time and distribution - are achieved
13 and maintained for so long as the Central and Southern Florida Project is authorized.

14 To ensure that this objective is achieved, this section directs the Secretary to dedicate
15 and manage a quantity of water, derived from the existing Central and Southern Florida
16 Project, as well as the implementation of the Comprehensive Everglades Restoration Plan, for
17 the natural system. To identify the amount of water to be dedicated, as a matter of federal
18 law, this section directs the Secretary to issue, with the concurrence of the Secretary of the
19 Interior, programmatic regulations within two years of the date of enactment. Additionally,
20 all project specific regulations, to be developed after notice and opportunity for comment and
21 in consultation with other Federal agencies and the State of Florida, must be consistent with
22 the programmatic regulations, based upon the best available science, and assure that the
23 quantity, quality, timing and distribution of water for the natural system derived from each
24 Comprehensive Everglades Restoration Plan feature is achieved and maintained. Finally, the
25 Secretary is directed to ensure that implementation of the Comprehensive Everglades
26 Restoration Plan does not cause substantial adverse impacts on existing legal users of water,
27 including Everglades National Park, water for the preservation of fish and wildlife in the
28 natural system, agricultural water supply and other legal uses as of the date of enactment.
29 Existing authorized levels of flood protection will be maintained.

30 Subsection (j) directs the Secretary and the Secretary of the Interior, in consultation
31 with the Environmental Protection Agency, Department of Commerce and the State of
32 Florida, to jointly submit reports to the Congress, beginning on October 1, 2005 and ending
33 on October 1, 2036 that describe the implementation of the Comprehensive Everglades

1 Restoration Plan. The report shall include the determination of each Secretary concerning
2 the benefits to the natural system and the human environment that have been achieved as of
3 the date of the report.

4 Implementation of the CERP as authorized in this Act will ensure that America's
5 Everglades are restored, preserved, and protected for future generations. It will also provide
6 for other water-related needs for South Florida.

SEC. 4. WATERSHED AND RIVER BASIN ASSESSMENTS.

This section amends an authority that the Corps has had since 1986 - Section 729 of the Water Resources Development Act of 1986. The purpose of this provision is to enhance the ability of the Corps of Engineers to help address complex water resource problems that include large geographic areas across multiple governmental jurisdictions, and enhance the ability of the Corps to work efficiently and effectively in a watershed environment. Such assessments are to be conducted in cooperation with the Departments of the Interior and Agriculture, the Environmental Protection Agency, and other agencies such as the Departments of Commerce and Transportation, and the Federal Emergency Management Agency, as appropriate. The Corps will also consult with other Federal agencies, as well as, with Tribal, State, interstate, and local governmental entities on such assessments.

The legislation would increase the total authorized appropriations limit from \$5,000,000 to \$15,000,000, and add a non-Federal cost sharing requirement. The non-Federal share of the cost of the assessments is 25 percent. The Secretary is authorized to accept contributions of services, materials, supplies and cash from Federal, Tribal, State, interstate, and local governmental entities where such contributions will facilitate completion of the assessments to meet all or part of the non-Federal share. The assessments would be conducted for a broad variety of water resources needs tailored to the specific situation in a riverbasin or watershed. These needs would include both human, fish and wildlife, and aquatic needs, including, but not limited to, ecosystem protection and restoration, water quality, flood damage reduction, navigation, watershed protection, water supply, and drought preparedness. To the extent practicable, the assessments will consider and enhance those assessments already conducted by other Federal, State, and interstate agencies. These assessments can benefit from work done under the Clean Water Action Plan. This legislation does not authorize the implementation of feasibility studies on specific projects or the projects themselves.

The current authority limits the cost of the total program to \$5,000,000. While the President's budget for fiscal year 2001 includes funding for four watershed and basin studies, there is a demand for additional studies which would exceed the program limit. This provision addresses this need.

SEC. 5. BROWNFIELDS REVITALIZATION PROGRAM.

The legislation authorizes the Secretary to establish and carry out a program to provide assistance to non-Federal interests in the remediation and restoration of abandoned or idled industrial and commercial sites where such assistance will improve the Nation's streams, rivers, lakes, wetlands, and floodplains. While other Federal agencies are working to solve Brownfields problems at a broader level, this authority will limit the Corps to water bodies where the quality, conservation, and sustained use of those water bodies are adversely effected. This authority will enhance significantly the ability of the Corps to complement and supplement the work of other Federal, State and local partners who are involved in site assessment, environmental cleanup, and redevelopment activities. The program shall be implemented in consultation and cooperation with other appropriate agencies involved in the brownfields process to facilitate information exchange, comprehensive planning, and integration of related activities. Such agencies would include, but not be limited to, the Environmental Protection Agency and the Departments of the Interior, Commerce, Housing and Urban Development, and Transportation. To the maximum extent practicable, these efforts will be done in cooperation and coordination with other Federal, Tribal, State, and local efforts to maximize resources available for the remediation, restoration, and redevelopment of brownfield sites.

The Corps has been assisting, predominantly on a reimbursable basis, brownfields projects across the country. However, the Corps can take a more active role in this national partnership, assisting in projects that would complement and strengthen current efforts in areas where the Corps would have a unique expertise. The Corps would focus its efforts on the clean-up and restoration of Brownfields where such activities will contribute to the restoration and protection goals for waterways and watersheds, thus improving the quality of life for many Americans. This authority could be used in combination with existing authorities, and enhance the Corps ability to address problems and opportunities where the degradation of land resources near or immediately adjoining waterways has affected adversely water ecosystems, the economy, and public health. Specifically, this legislation provides the authority for the Corps to assist local governments in assessments, planning, design, remediation and environmental restoration of Brownfields.

The Secretary shall ensure that activities are undertaken in collaboration with the respective Federal, State and local agencies that have complementary programs and interests. The Secretary may implement a project after determining that the project is justified by the

1 public health and safety, and environmental benefits that would be provided to the quality of
2 waterways and watershed environments. No further economic justification is required if the
3 Secretary determines that the proposed activities are cost effective. Studies conducted under
4 this authority would be in accord with legislatively required cost sharing, and the non-Federal
5 share of projects would be 50 percent, with non-Federal interest providing the lands,
6 easements, rights-of-way, and relocations; holding and saving the Federal government from
7 claims and damages; and operating and maintaining any project implemented under this
8 authority. The legislation would authorize the Army Corps of Engineers to engage in these
9 activities over a 4 year period beginning in fiscal year 2002, with a programmatic
10 appropriation limit of \$25,000,000 annually for such studies and projects nationwide. There
11 will be a \$5,000,000 one-time Army Civil Works funding limit at any single site. The
12 Secretary shall prepare a report on the Brownfields Restoration Program, and shall submit to
13 Congress findings and recommendations on the program by December 31, 2005.

SEC. 6. TRIBAL PARTNERSHIP PROGRAM.

This legislation authorizes the Secretary to work with Federally recognized Tribal governments, to include Alaskan Natives, and other Federal agencies, to plan and determine the feasibility of water resources development projects, including, but not limited to, projects for flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources. The legislation acknowledges the unique government-to-government relationship with Tribal governments, and authorizes the Secretary to consider traditional cultural knowledge and values when formulating projects and considering the applicability and value of in-kind contributions. The Secretary may utilize unique Tribal capabilities.

The Secretary is authorized, in cooperation with Indian tribes and other Federal agencies, to study and determine the feasibility of implementing water resources development projects to benefit Indian tribes, their members, or trust resources. Studies and projects considered will be located primarily within the external boundaries of reservations, or within traditional communities, or substantially benefit tribal lands or resources, or preserve cultural values. Studies conducted under this authority may address, but are not limited to, projects for flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources. Studies undertaken under this authority are subject to normal study cost sharing requirements. The Secretary would develop ability-to-pay procedures to assist low income and economically disadvantaged communities in funding studies conducted under this authority. Further, it is recognized that a strict application of economic justification requirements could unduly limit the scope and type of projects studied under this authority. In this regard, the Secretary should use existing policy and regulatory flexibility to consider non-economic factors and unique tribal conditions when making recommendation under this authority.

The legislation would authorize an appropriation limit of \$5,000,000 for fiscal years 2002 through 2006, with a \$1,000,000 one-time Corps funding limit for any tribe.

SEC. 7. ABILITY TO PAY.

Under existing law, the ability-to-pay procedures are only authorized for reducing the non-Federal share of the cost of constructing flood damage reduction and agricultural water supply projects. This provision amends an existing authority to include environmental protection and restoration projects as one of three types of Army Corps of Engineers projects for which the ability to pay provision applies to construction. In addition, the provision also provides for further assistance to financially distressed communities by allowing ability to pay procedures to apply to the non-Federal cost of feasibility studies for flood damage reduction and environmental protection and restoration projects. The provision extends the time for the Secretary to develop such ability-to-pay procedures.

Application of the ability-to-pay procedures to feasibility studies is needed since many communities do not have the financial ability to finance studies, let alone projects. The provision also allows the Secretary to consider additional criteria to account for the non-Federal sponsor's financial ability to carry out its cost-sharing responsibilities, or to account for additional financial assistance that may be available from other Federal agencies or the State or States in which the project is located.

SEC. 8. PROPERTY PROTECTION PROGRAM.

The proposed legislation would significantly reduce the potential for property damage from criminal activity at water resources projects under the jurisdiction of the Department of the Army. In the recent past, recreation areas, natural resource sites, cultural/historical property, hydroelectric power plants and navigation locks and dams have been vandalized routinely, and the cost of this criminal activity to the taxpayer is great. As an example, during the period 1986 through 1997, these recreation areas sustained losses approximating \$12.5 million due to vandalism, arson, and burglary. The proposed legislation to allow rewards for information or evidence leading to the arrest and prosecution of individuals causing damages would help to significantly reduce these losses. The legislation would authorize an appropriation limit of \$500,000 annually for this program.

SEC. 9. NATIONAL RECREATION RESERVATION SERVICE.

In 1995, the U. S. Army Corps of Engineers and the U.S. Forest Service began discussions regarding the development of a reservation service for recreation sites and facilities operated by each agency. The agencies envisioned seamless public service through easy, one-stop-shopping for reservations to all participating agencies' recreation opportunities. The Forest Service advertised, awarded, and is currently administering the National Recreation Reservation Service (NRRS), a state-of-the-art reservation service for Federal recreation sites and facilities across the country. In October of 1998, NRRS reservations through a toll free telephone number became available to the public. The NRRS Internet web site became operational for reservations in May 1999. Over 600,000 NRRS reservations were made in 1999, the first year of operation.

Section 611 of the of Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277) states that no part of any appropriations shall be available for interagency financing of boards, commissions, councils, committees, or similar groups which do not have a prior and specific statutory approval to receive financial support from more than one agency or instrumentality. In keeping with the restriction found in Section 611, the Corps placed an Economy Act order with the Forest Service so that Corps managed recreation sites and facilities would be available on the NRRS. The proposed legislation provides the statutory authority required by Section 611 for the Corps and the Forest Service to jointly fund an Interagency Contract Management Office for the NRRS which would provide overall administrative and operational management of the NRRS, financial management and payment processing, and contractor performance measurement to support the performance based contract. The proposed legislation allows the Corps to participate on a day-to-day basis in the management of the reservation service for the Federal recreation sites and facilities held in the Corps' inventory. This proposed legislation allows the NRRS to become a joint agency venture receiving policy guidance and input from all participating agencies on a meaningful basis. This legislation allows the NRRS to provide the public with the most efficient and user-friendly system of reserving Federal recreation sites and facilities by encouraging all agencies, such as the National Park Service and the Bureau of Land Management, which hold such sites in their inventory to participate.

1 **SEC. 10. OPERATION AND MAINTENANCE OF HYDROELECTRIC**
2 **FACILITIES.**

3 The Corps of Engineers operates and maintains hydroelectric power plants with a
4 total of nearly 21,000 megawatts of capacity, making it the largest hydropower owner in the
5 United States, and one of the largest electric utilities based on capacity. These large
6 hydroelectric generating facilities require specially trained craftsmen for their operation and
7 maintenance. The skills that are required for the main power train of these hydroelectric
8 facilities are not generally available in the private sector. There are, however, auxiliary
9 support systems that can be maintained most cost efficiently by the private sector. Such
10 systems include heating, ventilating and air conditioning (HVAC), water systems, lighting,
11 low to medium voltage power distribution, and fish by-pass equipment and facilities that are
12 similar to those found in non-power industrial facilities. Under this proposal, the Corps will
13 determine which maintenance activities can be most cost effectively maintained by other
14 means.

SEC. 11. INTERAGENCY AND INTERNATIONAL SUPPORT.

Under current law, the Secretary is authorized to receive funds to support Federal agencies or international organizations (after consultation with the Secretary of State) to address problems of national significance to the United States, including problems related to water resources, infrastructure development, and environmental protection. The total amount currently authorized to be appropriated is \$1,000,000. This limit will be reached with amounts included in the President's Fiscal Year 2001 Budget. This proposal is to increase the appropriation limit by a modest amount to allow this program to continue.

SEC. 12. REBURIAL AND TRANSFER AUTHORITY.

This proposal authorizes the Secretary to identify areas at civil works projects that may be used to reinter Native American remains that have been discovered on project lands, and which have been rightfully claimed by a lineal descendant or an Indian tribe in accordance with applicable Federal law. The Secretary, in consultation and consent of the lineal descendant or tribe, is authorized to recover and rebury the remains at such sites at full Federal expense. This section is not intended to affect or limit rights under the Native American Graves and Repatriation Act.

As an option, the Secretary may transfer to the Department of the Interior the land identified by the Secretary used to reinter Native American remains to be held in trust for the benefit of respective Native American tribes. In this case, the Secretary shall retain any necessary rights-of-way, easements, or other property interests that is necessary to carry out the authorized project purpose.

SEC. 13. AMENDMENT TO RIVERS AND HARBORS ACT.

Obtaining authorization for dams or dikes under 33 USC 401 involves considerable time, effort, and expenditure of resources by the proponent of the structure, the Department of the Army, the Corps of Engineers, and either the U.S. Congress or the appropriate state legislature. The degree of effort required by 33 USC 401 presumably is justified for dams or dikes proposed to span waterways that are navigable in fact and currently used to transport interstate or foreign commerce. However, for water bodies that have the legal status of navigable waters of the United States only because those water bodies are subject to the ebb and flow of the tide, or only because they were historically navigable, or only because they could be made navigable in fact with reasonable improvements, authorization of proposed dams or dikes under 33 USC 401 is neither needed nor practicable. For those categories of water bodies, authorization of any and all proposed structures by the Corps of Engineers under 33 USC 403 would be fully adequate to ensure protection for all aspects of the public interest, including environmental quality and the interests of non-commercial (i.e., recreational) navigation.

The proposed amendment to 33 USC Section 401 for the most part would have the effect of making the words of that statute conform to the actual practice of the regulatory programs administered by the Corps of Engineers. For many years the Corps of Engineers regulations governing the regulatory program under the Rivers and Harbors Act of 1899 (including 33 USC Sections 401 and 403) has provided that authorization under 33 USC 401 was required only for any dike or dam that “. . . completely spans a navigable water of the United States and that may obstruct interstate waterborne commerce.” (33 CFR 321.2(b)) The Corps of Engineers has interpreted and applied that provision of Corps regulations as requiring authorization under 33 USC 401 for a proposed dam or dike only if it would completely span a waterway that currently supports interstate waterborne commerce. To some degree this provision in Corps regulations was upheld as legally permissible in Hart and Miller Islands Area Environmental Group v. Corps of Engineers, 621 F.2d. 1281 (4th Cir. 1980). Because of the wording of the Corps’ regulations, the Corps for many years has been requiring that any dam or dike proposed to be built in any navigable water of the United States that is not currently used to transport interstate waterborne commerce would not need authorization under 33 USC 401, but must receive a permit from the Corps under 33 USC 403, and under 33 USC 1344 if a discharge of dredged or fill material would be involved in the construction of the dam or dike (as is usually the case). The proposed amendment to 33

1 USC 401 would require that every proposed new dam or dike proposed to be built in any
2 navigable water of the United States that does not require authorization under 33 USC 401
3 must receive a permit from the Corps under 33 USC 403, so that all aspects of the public
4 interest can be protected in a permit review.

SEC. 14. STRUCTURAL FLOOD CONTROL COST-SHARING.

This provision revises the Federal and non-Federal cost sharing requirement for structural flood damage reduction projects from a maximum Federal share of 65 percent and a minimum non-Federal share of 35 percent, to 50 percent Federal and 50 percent non-Federal. This revision is in recognition of the need of non-Federal interests to more fully share in the responsibility, accountability, and funding for carrying out such project in these times of Federal fiscal constraints. Under this revised cost-sharing formula, the non-Federal project sponsor will be an equal stakeholder in the cost of construction these important projects. The amendment made by this section will apply to a project or separable element for which a project cooperation agreement is signed after the date of enactment.

SEC. 15. CALFED BAY DELTA PROGRAM ASSISTANCE.

The CALFED Bay-Delta Program was initiated in 1995 as an unprecedented collaboration among Federal and California State agencies and leading urban, agricultural and environmental interests to address and resolve environmental and water management problems associated with the Bay-Delta system in central California. The Bay-Delta system provides drinking water for 22 million Californians, supplies irrigation water for more than 4 million acres of the world's most productive farmland, is the largest wetland habitat and estuary in the West, is home to one of the nation's most productive salmon fisheries, and is a critical part of the Pacific flyway for migrating birds. The CALFED mission is to develop a long-term comprehensive plan that will resolve ecological health and improve water management for beneficial uses of the Bay-Delta system.

This provision will enhance significantly the Army Corps of Engineers ability to participate in all CALFED planning and management activities, consistent with Public Law 104-333. Currently, Corps participation is limited because the Corps in many instances must rely on project-specific authorizations that do not ordinarily provide the flexibility for participating in inter-agency, bay-wide planning and management activities. This provision will provide the authority for the Secretary to request funds for the Army Corps of Engineers to participate in the CALFED Bay Delta Program, and to use funds provided by others to carry out ecosystem restoration projects and activities associated with the CALFED Bay Delta Program. The Secretary is required to fully integrate, with the CALFED Policy Group, or its successor, Army Corps of Engineers activities in the San Joaquin and Sacramento River basins.

SEC. 16. PROJECT DEAUTHORIZATIONS.

Section 1001 of the Water Resources Development Act of 1986, as amended, established criteria for the deauthorization of projects. That Act also requires a biennial submission to the Congress of a list of projects, or separable elements of projects, which have been authorized but have not met the criteria for continued authorization. Under current law, an authorized project must receive an obligation of funds during the 7 full years immediately preceding the transmittal of the list for it to remain authorized. If no obligations are made within 30 months after the list is submitted to Congress, the project is no longer authorized.

Currently, the Army Corps of Engineers has a substantial backlog of authorized projects which either not receiving sufficient funding for construction. This provision provides for a more the orderly deauthorization process, and one that directly relates to actual conditions that would effect the actual construction of a project (significant adverse environmental impacts, lack of local support, no longer economically justified, premature authorization, lack of funds, etc.).

The proposal has two sections to provide for a more orderly process of deauthorizing projects. First, if construction of a water resources development project or separable element is not initiated within seven years from the date the project or separable element was last authorized it would automatically become deauthorized. Second, those water resources development projects and any separable element of such a project, for which funds have once been obligated for construction, shall be de-authorized if Congressional identified appropriations have not been obligated for construction of the project or separable element during any five consecutive fiscal years. To further allow for an orderly consideration of projects the provisions would not become effective until three years after the date of enactment. In the case of each of the two situations noted above the Congress would be notified in advance of the pending deauthorizations, and the list of all projects or separable elements deauthorized would be publish in the Federal Register.

SEC. 17. FLOOD PLAIN MANAGEMENT REQUIREMENTS.

This provision amends Section 402 of the Water Resources Development Act of 1986, as it was amended by Section 202(c) of the Water Resources Development Act of 1996. The provision strengthens the ability of Army Corps of Engineers to work with non-Federal interests to reduce the impacts of future flood damages. The potential for additional flood damages remain even after the construction of a flood damage reduction project. The provision makes it clear that the non-Federal interests should adopt and enforce measures, practices and policies that they identify in their “Flood Plain Management Plans.”

The amendment to Section 402 also addresses the need to preserve the level of flood protection initially identified as being provided by a flood damage reduction project. The Corps should take into account the effects of future development in the design of the project. Non-Federal interests should be fully involved in this process and the expectation is that the design reflects the effects of non-Federal development. In doing so, the public’s expectation is that the level of flood protection identified with the project will remain over its life. Since the Corps projects become local projects once completed, this provision makes it clear that the “Flood Plain Management Plans.” will identify those measures that would be undertaken by the non-Federal interests to preserve the level of flood protection. The amendment made by this section will apply to a project or separable element for which a project cooperation agreement is signed after the date of enactment.

SEC. 18. TRANSFER OF PROJECT LANDS.

This provision authorizes the Secretary to develop and implement a plan to transfer to the Secretary of the Interior lands acquired for the Pick-Sloan Missouri River Basin Program located with the external boundaries of the reservations of the Three Affiliated Tribes (Arikara, Hidatsa, Mandan), the Standing Rock Sioux Tribe, the Crow Creek Sioux Tribe, the Yankton Sioux Tribe, and the Flandreau Santee Sioux Tribe of South Dakota.

Transferred lands would be held in trust for the benefit of these Tribes. The plan to transfer lands must be developed and implemented on cooperation with the Secretary of the Interior and in consultation with the tribes. Any lands to be transferred under this section shall be identified through a coordination process over a year-long period as the parties prepare maps of lands to be transferred and cooperate to identify and resolve implementation issues. The maps will identify any land and related structures that the Secretary considers necessary to be retained to carry out the authorized project purposes. The Secretary could retain any necessary rights-of-way, easements, or other property interest that are necessary to carry out any authorized project purpose, including the right to inundate the land transferred under this section or draw down a project reservoir, as necessary to carry out authorized project purposes. The Corps of Engineers would be required to conduct any necessary environmental, cultural resource, hazardous waste, and other surveys and evaluations prior to transfer, and comply with applicable environmental and historic preservation law. Schedules shall be developed within one year of enactment and the Secretary shall arrange for the United States Geological Survey, in consultation with the Bureau of Indian Affairs, and other appropriate Federal agencies, to accomplish a comprehensive study of the potential impacts of the transfer on South Dakota Sioux Tribes having water claims within the Missouri River Basin, on water flows in the Missouri River. No transfers may occur unless the Secretary concludes that the transfer will not significantly reduce the amount of water flow to the downstream States of the Missouri River.

SEC. 19. PUGET SOUND AND ADJACENT WATERS RESTORATION.

Puget Sound and adjacent waters encompasses over 15,000 square miles in northwest Washington and incorporates all waters in the Puget Sound drainage basin. A significant amount of wetlands, estuary, and river and stream habitats for fish and wildlife has been degraded or destroyed as a result of Federal, State, and local actions, including Federal navigation projects and agricultural and forest practices. Urban growth in the region has also been a contributing factor in loss and/or degrading of critical wetland and fish and wildlife habitat. Improving the health of this resource area is critical to Tribes and States, and the Nation at large for its abundant fisheries, and habitats used for migrating waterfowl.

This legislation authorizes the Secretary, with the concurrence of the Secretaries of Commerce and Interior, and in consultation with other Federal, tribal, state, and local agencies, to undertake critical restoration projects in the Puget Sound watershed. Such projects shall be consistent with existing Federal programs and projects and should provide immediate and substantial restoration, preservation, and ecosystem protection benefits.

A non-Federal sponsor shall be responsible for 35 percent of the total cost of each critical restoration project. The legislation authorizes a total of \$10,000,000 in Department of the Army Civil Works appropriations to pay the Federal share of the cost of carrying out critical restoration projects. The maximum Army Civil Works appropriation for any one project under this authority is limited to \$2,500,000.